APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
E.D. PENNSYLVANIA

Civ. A. No. 86-5357

NATIONAL RAILROAD PASSENGER CORPORATION

v.

COMMONWEALTH OF PENNSYLVANIA
and TOWNSHIP OF TREDYFFRIN

Jan. 2, 1991

MEMORANDUM

NEWCOMER, Senior District Judge.

The court is here addressing the motion of National Railroad Passenger Corporation ("Amtrak") to enforce this Court's Order of June 30, 1990 permanently enjoining the Commonwealth of Pennsylvania Public Utility Commission (the "Commission") from assessing Amtrak for maintenance of the Cassatt Avenue bridge structure located in the Township of Tredyffrin, Pennsylvania. For the reasons set forth in this Memorandum, Amtrak's motion will be granted.

Procedural Background:

On June 30, 1987 this court entered an Order permanently enjoining the Commission from assessing Amtrak for maintenance of the Cassatt Avenue bridge structure,

in the matter entitled National Railroad Passenger Corp. v. Commonwealth of Pennsylvania Public Utility Commission, 665 F.Supp. 402 (E.D.Pa.1987), affirmed, 848 F.2d 436 (3d Cir. 1998) cert. denied, 109 S.Ct. 231 (1988). The court found that "Title 45 of the United States Code section 546b exempts Amtrak from the payment of special assessments such as that imposed by the [Commission]." 665 F.Supp. at 412. Accordingly, the Commission was permanently enjoined from assessing Amtrak for costs associated with the design, construction or maintenance of the Cassatt Avenue bridge.

On July 3, 1990, the defendant Commission entered an order imposing on Amtrak the costs of maintaining the substructure and superstructure of the Cassatt Avenue Bridge; the Commission's July 3, order is the subject of this motion. The Commission argues that this court's injunctive Order of June 30, 1987 applied only to the assessment of costs associated with the reconstruction of the Cassatt Avenue bridge, and that the injunctive order did not address the issue of assessment of costs for the maintenance of the current structure. Amtrak, however, contends that the injunctive order of this court does extend to an assessment of costs against Amtrak for the maintenance of the bridge in its current condition.

The Cassatt Avenue bridge was built in 1899-1900 by the Philadelphia Division of the Pennsylvania Railroad Company, and was maintained by the Pennsylvania Railroad for many years. Amtrak, the present owner of the tracks beneath the bridge, has not maintained the bridge on its own.[1] The Commission argues, citing Consolidated

---

[1] A the time this court issued the injunctive order, this court was fully aware that Amtrak owns and operates the rail line under the bridge, and that it has not, as successor in interest to the Pennsylvania Railroad maintained the bridge on its own. See National Railroad Passenger Corp. v. Commission of Pennsylvania Public Utility Commission, 665 F.Supp. at 404, citing the ALJ Foundation's Recommended decision at 5-6.

Rail Corporation v. Pennsylvania Public Utility Commission, 55 Pa. Cmwlth. 576, 423 A.2d 1108 (1980), that Amtrak, as the successor in interest to the Pennsylvania Railroad, is obligated to continue to maintain the bridge.

In Consolidated Rail, the Pennsylvania Commonwealth court upheld the Commission's apportionment of costs of repairing a bridge which carried a roadway over tracks owned by Consolidated Rail Corporation ("Conrail").[2] Although the facts in Consolidated Railroad are similar to those in the instant case, Consolidated Railroad is not applicable here. The only issues before the court in Consolidated Railroad were whether the decision of the Administrative Law Judge to impose against Conrail costs for maintenance involved an abuse of discretion, and whether the apportionment of the costs of the maintenance of the bridge by the Commission was "just and reasonable." What is at issue in the instant case, is the applicability of the federal exemption statute to the imposition of costs against Amtrak for maintenance of a bridge. Moreover, the question of whether a "just and reasonable" apportionment of costs of maintaining or repairing a project has been made is of an entirely different nature than the question of whether the apportionment of the costs of maintaining or repairing a project is a tax from which Congress has exempted Amtrak.

Consolidated Railroad did not address the issue of the operation of 45 U.S.C. 546b as a bar to the Commission's assessment of costs of maintaining the bridge, as the decision in that case was rendered prior to the enactment

---

[2] In Consolidated Rail, Conrail had succeeded as owners of the tracks and the bridge above it pursuant to the Regional Rail Reorganization Act of 1973, after Reading Railroad, which had owned and maintained the bridge prior to 1973, went into reorganization under the federal Bankruptcy Act. Conrail did not continue to maintain the bridge after receiving the property. The Commission, however, in apportioning the costs of maintenance of the bridge, considered the fact that Conrail was a successor in interest to a railroad that had undertaken to maintain the bridge in the past.

of the statute. Therefore, while Amtrak may be the successor in interest to the Pennsylvania Railroad, and Pennsylvania Railroad may have maintained the bridge before Amtrak bought the tracks beneath it, unlike Conrail in Consolidated Rail, Amtrak is exempted by a federal statute from paying such fees.

The injunctive order issued by this court enjoined the Commission from assessing Amtrak "for design, construction, or maintenance of the Cassatt Avenue bridge structure," (emphasis added). The Commission's special assessment clearly falls within the protective perimeter of this court's injunctive order. Injunctive orders must be obeyed in spirit as well as in letter. Harthman v. Witty, 480 F.2d 339, 340 (3d Cir.1973), citing Howat v. Kansas, 258 U.S. 181, 190, 42 S.Ct. 277 (1922). This court's order, therefore, does not merely apply to the single specific reconstruction proposal that was before the court in 1987.

The Commission, however, argues that it is not bound by this court's order because the newly imposed assessment is for maintaining the existing bridge instead of constructing a new one. That the Commission had decided to repair rather than replace the existing structure is immaterial for the purpose of determining whether the imposition of costs associated with the maintenance of the bridge upon Amtrak is permissible. Both are "special assessments" of the sort this Court already has concluded are violative of the exemption for Amtrak set forth in 45 U.S.C. § 546b. The Commission's contention that the court's injunction allows it to require Amtrak to maintain the existing structure, as opposed to a new structure, rests on a distinction without a difference. This court's Order expressly enjoins "any assignment of costs to the National Passenger Railroad Passenger Corporation under the Pennsylvania Public Utility Commission's Order for design, construction or maintenance of the Cassatt Avenue Bridge Structure." [emphasis added].

It is clear, in light of the broad interpretation of the statute by both this court [3] in issuing, and the Third Circuit in affirming, the permanent injunction against the Commission, that an assessment for maintenance of a right of way such as the one at issue, cannot lie. As stated by the Third Circuit in its review of the legislative history of 45 U.S.C. 546b:

The statute's text, its legislative history, and analogous case law persuade us to give the exemptions in section 546b a broad interpretation that fulfills the intent of Congress. That intention is clear—to impose a passenger "user fee" on state and local governments. It would be manifestly inconsistent with that design to make Amtrak pay for related local improvements in the many instances where the states could and would impose them. Therefore, we hold that Amtrak's immunity from local "taxes or other fees" in section 546b extends to assessments for local improvements of the kind at issue here. [the assessment for construction and maintenance of the Cassatt Avenue Bridge].

848 F.2d at 440 (3rd Cir.1988), cert. denied, 109 S.Ct. 231 (1988).

The Third Circuit's analysis is wholly applicable to the July 3, 1990 assessment made by the Commission. The

---

[3] See this court's injunctive order of June 30, 1987, National Railroad Passenger Corp. v. Commonwealth of Pennsylvania Public Utility Commission, 665 F.Supp. at 411 (E.D.Pa.1987): [the] extensive federal involvement [in] Amtrak's management, finances and operation make it apparent that the legislative exemptions should be liberally construed to effectuate its goals. Section 546b is no mere exemption of an essentially private entity in exchange for some other benefit to the federal government. Rather, it is an attempt to guarantee Amtrak's fiscal integrity, and indeed its survival. The federal government has pursued governmental functions and policies through Amtrak. It would be inappropriate to undermine those goals through the too stingy construction of the exemption offered by defendants.

assessment is for a purely local pedestrian walkway which Amtrak should not have to bear the burden of maintaining. It is apparent to this court that the Cassatt Avenue bridge is being left in place primarily because of the request by Easttown Township and the Southeastern Pennsylvania Transit Authority ("SEPTA") that it remain, as SEPTA fears that removing the bridge would cut off pedestrian access via the bridge to its Berwyn Station (see Defendant Pennsylvania Public Utility Commission's Brief at 1-2). The Commission is merely trying to get Amtrak to foot the bill for its own local concerns. Clearly Amtrak would derive no benefit from maintaining the bridge as a pedestrian walkway.[4] Special assessment by the Commission against Amtrak in this instance would therefore be the use of funds, intended for Amtrak operation, for the precise purpose that Congress sought to prohibit. The Commission's order imposing costs on Amtrak for maintaining the bridge, therefore, violates the exemption statute, Title 45 U.S.C. 546b.

It is well accepted that person bound by an injunctive order of a court must obey the order's command. GTE Sylvania v. Consumers Union of the United States Inc., 465 U.S. 375, 386, 100 S.Ct. 1194, 1201 (1980). Moreover, state and local officials, commissions, departments, agencies and the like may be compelled to abide by injunctive orders issued by a court. See Halderman v. Pennhurst State School and Hospital, 555 F.Supp. 835 (E.D.Pa.1983). Federal courts "are not reduced to issuing injunctions against state officers and hoping for compliance. Once issued, an injunction may be enforced."

---

[4] Indeed, the only situation where assessments for maintenance of a right of way has been upheld involved user fees/rental payments under a franchise agreement with the city charging the fees. See National Railroad Passenger Corporation v. City of New York, 882 F.2d 710 (2nd Cir.1989). Rental payments in exchange for a benefit received are clearly not what is at issue here. In this case what is at issue is instead simply a contribution requested for the maintenance of an existing structure for purely local purposes.

Hutto v. Finney, 437 U.S. 678, 690, 98 S.Ct. 2565, 2573 (1978).

The Commission is therefore permanently enjoined from imposing against Amtrak any costs for maintenance of the Cassatt Avenue Bridge Structure under the Commission's July 3, 1990 order.

An appropriate order follows.

ORDER

AND NOW, this 2nd day of January, 1991, upon consideration of the Plaintiff's Motion to enforce this court's order of June 30, 1987, and the responses thereto, the Court finds that the Commonwealth of Pennsylvania Public Utility Commission (the "Commission") is in violation of the Order of this court issued June 30, 1987, permanently enjoining the Commission from assessing Amtrak for maintenance of the Cassatt Avenue bridge structure. It is hereby ORDERED that Amtrak's Motion is GRANTED.

It is further ORDERED that the Commission is Permanently Enjoined from imposing on Amtrak any costs of maintenance of the Cassatt Avenue Bridge structure under its July 3, 1990 Order,

It is further ORDERED that the Commission shall pay the reasonable attorney's fees and costs incurred by Amtrak (1) in contesting before the Commission the imposition of assessments levied in violation of the June 30, 1987 Order of this court and (2) in enforcing this Court's permanent injunction.

AND IT IS SO ORDERED.

APPENDIX B

[Filed Jul. 25, 1991]

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 89-784-CIV-J-12

NATIONAL RAILROAD PASSENGER CORPORATION,
Plaintiff,

vs.

STATE OF FLORIDA and JOHN TANNER,
STATE ATTORNEY IN AN FOR THE
SEVENTH JUDICIAL CIRCUIT OF FLORIDA,
Defendants.

JUDGMENT

AFTER CONSIDERATION of the parties' Stipulation and the entire record herein, it is hereby

ORDERED, ADJUDGED AND DECREED that

A. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1349 and pursuant to § 601(a)(2) of the National and Community Service Act of 1990 (Pub.L.No. 101-610);

B. The Rail Passenger Service Act, 45 U.S.C. § 546, as amended by the National and Community Service Act of 1990, Pub. L. No. 101-610, retroactively preempts the Florida statutes and laws at issue in this case as they relate to Plaintiff National Railroad Passenger Corporation's ("Amtrak") waste disposal practices from February 5, 1976;

C. Defendant, State Attorney John Tanner, shall within 5 days after entry of this Judgment, secure the dismissal of the pending cases and charges against Amtrak in the Circuit Court, Seventh Judicial Circuit in and for Putnam County, Case Nos. 89-60-CFM and 89-1353-CFM, and in the County Court in and for Putnam County, Case No. 90-854 MM06, and Defendant, State Attorney John Tanner, and all persons in active concert or participation with him are hereby permanently enjoined from enforcing any federal, state, or local laws that apply to Amtrak's waste disposal practices;

D. Amtrak's Second and Third Claims for Relief shall be dismissed as moot; and

E. Each party shall be responsible for its costs and attorneys' fees.

DONE AND ORDERED this 25th day of July, 1991.

/s/ Howell W. Melton
United States District Judge